

AVIATION DRUG/ALCOHOL ABATEMENT UPDATE

January 1996

NO. 96-1

IT'S ALMOST THAT TIME AGAIN!

REMINDER: ANNUAL MIS REPORTS ARE DUE MARCH 15, 1996!

The following aviation employers are required to submit annual reports covering their antidrug and alcohol misuse prevention programs for calendar year 1995:

- ♦ All part 121 certificate holders.
- ♦ All entities with 50 or more covered employees, as of January 1, 1995.
- ♦ Other aviation employers selected by the FAA. (Employers in this category will be notified in writing by the FAA if they are required to submit a report.)

Copies of the form may be requested through the Regional Drug Abatement Offices.

----- **DOES YOUR COMPANY HAVE FEWER THAN 50 COVERED EMPLOYEES?**

The FAA is finding that some of the aviation employers that have been contacted for failure to submit 1994 annual MIS reports were actually not required to do so because they employed fewer than 50 covered employees on January 1, 1994. However, their antidrug plan, or last amendment, reflected a greater number of covered employees. If the covered employee count for your company was less than 50 on January 1, 1995, or subsequently dropped to less than 50, then an amendment should be submitted to the Drug Abatement Division to avoid this from happening to you. Similarly, if the covered employee count has increased to 50 or more covered employees an amendment should also be submitted to the Drug Abatement Division.

POLICY POSITIONS GUIDANCE DOCUMENTS

The Drug Abatement Division recently standardized its issuance of policy determinations. They will be issued in the form of Policy Position guidance documents, one of which is attached to this UPDATE. In early 1996 a special edition of the UPDATE will transmit many Policy Positions issued to date.

Inside this issue:

Consortia Amendment Requirements
Random Testing Program
Comparison of Antidrug & AMPP Requirements
Recent Inspection Findings
Monitoring Contractor Compliance
Drug and Alcohol Training for Supervisors

**DRUG ABATEMENT DIVISION INTERNET
HOME PAGE COMING!!**

The Drug Abatement Division is developing a Home Page on the Internet for those interested in surfing the World Wide Web. The FAA **Office of Regulation and Certification, AVR, will be the parent site**. The Home Page will contain information from many of the organizations in the Office of Aviation Medicine (AAM). Under the AAM Program Information Section will be an area entitled Aviation Industry Substance Abuse Prevention Programs, and many current topics pertaining to the antidrug and alcohol misuse prevention programs will be found there. On-line availability will be occurring soon. We will publish our Internet address in the next newsletter.

CONSORTIA PLAN AMENDMENT REQUIREMENTS

In the last *UPDATE*, Number 95-2, we outlined revised FAA plan amendment requirements. However, these new requirements only apply to aviation employers, not FAA-approved consortia. Consortia must continue to submit plan amendments (*in duplicate*) to the Drug Abatement Division for *any* changes in their FAA-approved programs.

RANDOM TESTING PROGRAM COMPONENTS

Random testing is intended to complement the other elements of an antidrug program. This type of testing is a fundamental part of an effective program and necessary to deter drug use and alcohol misuse. The key components of a random testing program are discussed below.

General Principles

In the context of the Drug Abatement Program, random sampling is the process of selecting employees performing safety-sensitive functions for drug/alcohol testing so that each employee has an equal chance of selection each time the sampling is performed. In addition, selecting a particular employee should not have any impact on the probability of selecting any other employee (independence) and the probability of any individual being selected should always be the same. In implementation, employers must ensure that factors like employee availability are not allowed to skew the randomness of the testing program.

Testing Rate

Also see Aviation Drug Abatement UPDATE 94-2 and Aviation Drug/Alcohol Abatement UPDATE 95-1.

The minimum annual percentage rate for random testing is set for each transportation industry. The random testing rates are determined based on the information in the annual Management Information System Data Collection Forms submitted by employers. Random testing rate adjustments will occur on January 1 and the minimum annual percentage rate for random drug/alcohol testing will be published beforehand in the Federal Register.

The random drug and alcohol testing rates for 1996
will stay at 25 percent.

The drug and alcohol random testing rates are independent and a separate determination must be made to set each rate.

Methodology

Also see Aviation Drug Abatement UPDATE Fall '92.

The FAA requires that a random number table or computer-based random number generator be used to ensure a true random sampling of the population of safety-sensitive employees. "Drawing names from a hat, jar, pot, etc." does not ensure that every covered employee in the random pool has an equal chance of being selected and tested. Therefore, the FAA no longer approves the use of this method.

An employer's random testing program must ensure that all covered employees, whether or not they have been selected for testing in the past, remain in the selection pool for each subsequent selection.

Frequency of Selections

The random selection occasions must be reasonably spread throughout the year. The DOT has determined that random selections must be performed **at least quarterly** to be reasonably spread throughout the year.

Number of Tests to be Conducted

The following formula may be used to determine the number of random tests that must be conducted each testing period to meet the required annual random testing rate.

$$(\text{annual random testing rate}) \times (\text{\# of covered employees}) \times \left(\frac{1}{\text{\# of test periods per year}} \right)$$

Since it is not possible to test part of a person, results with a fraction must be rounded up to the next whole number.

In a perfect system, each employee selected for testing would be tested. An employer's first goal after the random testing list is drawn should be to try to test each of the individuals on the list during the testing period. Employees not available for random testing when selected, (e.g., those on sick leave, vacation, travel, or training) should have their names held by the employer and be tested when they return, if it is within the same test period. Recognizing that this is not a perfect world, the FAA has permitted employers to excuse employees from testing, but only in limited circumstances. Employees not tested because they were unavailable for the entire test period may NOT be tested during the next cycle, unless they are randomly selected in the subsequent draw.

Unannounced Testing

Also see Aviation Drug/Alcohol Abatement UPDATE 95-2 and Aviation Drug Abatement UPDATE 93-2.

The random testing selection list should be generated at the beginning of the test period, so that the employer has the entire period to test the selected individuals. Once the list has been generated, individuals should not be informed that they have been selected until they must submit to testing. Advance notice of testing must not be given and test dates and times must be kept confidential.

Random drug testing should be done as soon as possible after the employee has been notified, but no more than 2 hours from notification to collection.

Random alcohol testing should be done immediately after the employee has been notified, with the time between notification and testing no more than the requisite travel time.

If an employer's program manager is a member of the random pool, then the employer must ensure that he/she is equally likely to be selected, and unaware of the date and time of the test until just prior to collection.

Random *alcohol* testing must be conducted:

- **While** the employee is performing a safety-sensitive function;
- Just **before** the employee is to perform a safety-sensitive function; OR
- Just **after** the employee has ceased performing a safety-sensitive function.

COMPARISON OF THE REQUIREMENTS OF THE ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS

In this issue we continue to compare the requirements of the antidrug and the alcohol misuse prevention programs. Included this time are education and training, consequences for employees with verified positive drug tests who engaged in alcohol-related conduct, or who refused to submit to required testing.

This is only intended to serve as a guidance document. It does not substitute or replace the requirements found in the Code of Federal Regulations. The regulatory requirements have been paraphrased and include FAA policy, which is indicated by *italicized* text.

DRUG

ALCOHOL

EDUCATION AND TRAINING

ANTIDRUG EMPLOYEE ASSISTANCE PROGRAM	ALCOHOL MISUSE INFORMATION AND TRAINING
<p>Each employer is required to <u>display and distribute</u> informational material, the employer's policy regarding drug use in the workplace, and a community service hot-line telephone number for employee assistance as part of its EAP education program.</p> <p><i>The hot-line telephone number must provide for 24 hour a day assistance.</i></p> <p>The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a required drug test.</p> <p>Each employer must institute a reasonable program of initial training for employees and additional training for supervisors who will make reasonable cause testing determinations.</p> <p>The EAP training program for employees must include at least the following elements:</p> <ol style="list-style-type: none">1. The effects and consequences of drug use on personal health, safety, and the work environment;2. The manifestations and behavioral cues that may indicate drug use and abuse; <u>and</u>3. Documentation of training given.	<p>Each employer is required to provide educational materials that explain the Alcohol Misuse Prevention Program (AMPP) requirements and the employer's policies and procedures with respect to meeting those requirements.</p> <p>Each employee must receive a copy of the material prior to the start of alcohol testing under the FAA's rule.</p> <p>Each new covered employee shall be given a copy of the material.</p> <p>Written notice of availability of this information must be provided to representatives of employee organizations.</p> <p>The alcohol misuse information must include:</p> <ul style="list-style-type: none">• Identity of a contact person to answer questions.• Categories of employees subject to the AMPP.• Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day each covered employee is required to be in compliance with the alcohol misuse requirements.• Prohibited employee conduct.• Testing circumstances.

The EAP training program for **supervisors** must include at least 60 minutes of initial training and reasonably recurrent training on the specific, contemporaneous, physical, behavioral, and performance indicators of probable drug use.

The EAP training should consist of interactive briefings, seminars, or meetings with employees and substance abuse experts/EAP specialists and/or the showing of comprehensive videos with knowledgeable persons available (in person or via telephone) to answer questions.

- Testing procedures.
- The requirement to submit to required alcohol tests.
- Explanation of what constitutes a refusal to submit to an alcohol test.
- Consequences for violations of the prohibitions (including refusals and the “permanent bar”).
- Consequences for alcohol concentrations of 0.02 or greater but less than 0.04.
- Information on the effects of alcohol misuse, intervention methods, and employee assistance program referral.

Employee training is not required.

Supervisory personnel who will make reasonable suspicion testing determinations must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Documentation of supervisor training is required.

Recurrent training for supervisors is not required.

CONSEQUENCES FOR EMPLOYEES WITH VERIFIED POSITIVE DRUG TESTS, WHO ENGAGED IN ALCOHOL-RELATED MISCONDUCT, OR WHO REFUSED TO SUBMIT TO TESTING

REMOVAL FROM SAFETY-SENSITIVE FUNCTION

Verified Positive Drug Test Result:

Covered employees with verified positive drug test results may **not** perform safety-sensitive functions.

Alcohol Concentration: Covered employees may **not** report for duty or remain on duty in a position requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

Covered employees having an alcohol concentration of 0.02 to 0.039 may not perform or continue to perform safety-sensitive functions until the employee's alcohol concentration measures less than 0.02 or the start of the employees next regularly scheduled shift, but not less than 8 hours after the initial test.

On-Duty Use: Covered employees may **not** use alcohol while performing safety-sensitive functions.

This prohibition also applies to covered employees who are at work and immediately available to perform safety-sensitive functions.

Pre-Duty Use: Employees may **not** perform flight crewmember, flight attendant, or air traffic controller duties within 8 hours after using alcohol. Employees may **not** perform flight instruction, aircraft dispatcher, aircraft maintenance or preventive maintenance, ground security coordinator or aviation screening duties within 4 hours after using alcohol.

Refusal to Submit to a Required Drug Test:

Covered employees may **not** refuse to submit to a periodic, post-accident, random, reasonable cause, or follow-up drug test.

Use Following an Accident: Covered employees with knowledge of an accident involving an aircraft for which he/she performed a safety-sensitive function at or near the time of the accident may **not** use alcohol for 8 hours after the accident unless he/she has been given a post-accident test, OR the employer determined that his/her performance could not have contributed to the accident.

Refusal to Submit to a Required Alcohol

Test: Covered employees may **not** refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test.

<i>PERMANENT DISQUALIFICATION FROM SERVICE</i>	
<p>Circumstances in which employees who engaged in prohibited use of drugs are absolutely barred from the performance of the same duties performed before the determination of such prohibited use:</p> <p><u>Two Verified Positive Drug Tests:</u> If a covered employee is determined to have two verified positive drug tests both conducted after 9/19/94, then he/she is permanently precluded from performing the safety-sensitive function he/she performed before the second drug test.</p>	<p>Circumstances in which employees who engaged in the misuse of alcohol are absolutely barred from the performance of the same duties performed before the violation:</p> <p><u>Two Alcohol Misuse Violations:</u> If a covered employee is determined to have violated the prohibited alcohol-related conduct provisions, other than on-duty use, twice after the employee becomes subject to the prohibitions, he/she is permanently precluded from performing the safety-sensitive duties he/she performed before the second violation.</p>

The bar on two-time violators will apply both to persons who go through rehabilitation and to those who, after evaluation by a substance abuse professional, are determined not to need treatment.

On Duty Use of a Prohibited Drug: If a covered employee is determined to have **used** a prohibited drug **while performing** a safety-sensitive function after 9/19/94, then he/she is permanently precluded from performing that safety-sensitive function for an employer.

On Duty Use of Alcohol: If a covered employee is determined to have **violated the on-duty use** of alcohol prohibition, he/she is permanently precluded from performing that safety-sensitive function for an employer.

ACTION ON REFUSAL TO SUBMIT TO TESTING

Refusals to submit to required drug or alcohol testing do **not** count toward the permanent bar; however, the FAA can take action to deny, suspend, or revoke an airman certificate based on such a refusal.

Employers are required to notify the FAA of any instance in which a 14 CFR part 61, part 63, or part 65 airman certificate holder refused to submit to a required drug/alcohol test.

Notification should be sent to: FAA/Civil Aviation Registry
Airmen Certification Branch (AFS-760)
P.O. Box 25082
Oklahoma City, OK 73125

Notification must be made within 5 working days of the refusal.

Failing to submit to a pre-employment or a return to duty drug test is not considered a 'refusal' for the purpose of certificate action since the individual has either not begun or has already been removed from the performance of a safety-sensitive function. Therefore, FAA notification is not required for refusals to submit to these types of drug tests.

Failing to submit to a return to duty alcohol test is not considered a ‘refusal’ since the individual is not performing safety-sensitive functions at the time of the test. Therefore, FAA notification is not required for refusals to submit to return to duty alcohol tests.

However, because a pre-employment drug test is intended to identify illegal use of drugs, failing to submit to a pre-employment or a return to duty drug test does require that the employee not be allowed to perform safety-sensitive functions until he or she has been evaluated by a substance abuse professional and completed any required rehabilitation prior to obtaining a negative drug test.

RECENT INSPECTION FINDINGS

During the week of November 13, 1995, the FAA conducted a High Impact Inspection in the Dallas-Fort Worth Metroplex Area. A national inspector workforce, totaling 16 inspection teams, inspected 67 aviation employers. This was the fourth High Impact Inspection conducted by the Drug Abatement Division in the past year. Earlier High Impact Inspections were conducted in Miami, Los Angeles, and Long Island. The FAA plans to schedule several such inspections in 1996.

One major area of noncompliance found during the inspections was the failure of aviation employers to ensure that verified negative drug test results had been received prior to permitting individuals to perform a safety-sensitive function.

MONITORING CONTRACTOR COMPLIANCE

The antidrug and alcohol misuse prevention program (AMPP) regulations prohibit part 121 and 135 certificate holders, air traffic control facilities, and sightseeing operators from using covered employees either directly or by contract unless such persons are subject to the requirements of 14 CFR part 121, appendices I and J. Covered employers have an obligation to ensure that their contractors have FAA-approved programs.

Recent inspections revealed that a number of aviation employers are conducting on-site audits of their contractor companies that have employees who perform safety-sensitive functions. Often employers ask questions regarding the antidrug and AMPP and conduct a review of contractor records. Although, contractor companies may **not** disclose individual test results without the specific written consent of the individual(s) involved, they may provide the auditors with random selection lists, laboratory summaries, and EBT/BAT documentation to demonstrate that they have properly implemented their programs.

NO EXCEPTIONS TO PRE-EMPLOYMENT DRUG TESTING

The now-suspended pre-employment alcohol testing requirements include a provision which permitted employers to use an alcohol test conducted during the previous six months by a prior employer to satisfy the pre-employment testing requirements of a new employer. Although such a provision is not included in the antidrug rule, many aviation employers believe that obtaining drug test results from a previous employer waives the requirement to conduct a pre-employment drug test on a new employee.

Under the FAA antidrug regulations there are no exceptions to pre-employment testing. Before an employee performs a safety-sensitive function for the *first* time for an employer he/she must undergo a pre-employment drug test for that employer. This includes employees moving from a non-covered function to a safety-sensitive function. Further, the employer shall not allow the individual to perform a safety-sensitive function until the employer receives a negative pre-employment test result.

NOTE: Recent legislation signed by President Clinton provides for aviation and other transportation employers to voluntarily conduct pre-employment alcohol testing. However, until the FAA amends the alcohol misuse prevention program regulations to set forth the conditions under which pre-employment alcohol testing can occur, no pre-employment testing is authorized. (Employers can conduct pre-employment alcohol testing under their independent authority to the extent such testing is authorized by state laws and any applicable labor-management agreements.

DRUG AND ALCOHOL RECOGNITION TRAINING FOR SUPERVISORS

A Drug/Alcohol Supervisor Training course is available through the Transportation Safety Institute (TSI) -- a training organization of the Department of Transportation. This course enables supervisors to detect employees in safety-sensitive functions who might be using alcohol or other drugs. Emphasis is placed on developing an understanding by supervisors who make reasonable suspicion/cause determinations of the physical, behavioral, and performance indicators of probable alcohol misuse and/or drug use. The course meets the regulatory requirements for supervisor training under the FAA's antidrug and alcohol misuse prevention programs. TSI is also offering a supervisor training program package to individuals wishing to conduct their own training.

For a 1996 training schedule or additional course information contact Ms. Shelly Crowley, TSI, at (800) 266-9187 or (405) 954-8856.

LABORATORY SUSPENSIONS/WITHDRAWALS

The following drug testing laboratories have recently been suspended by or have withdrawn from the National Laboratory Certification Program.

ACCU-LAB, Inc.

405 Alderson Street
Schofield, WI 54476

WITHDREW - September 6, 1995

Laboratory Corporation of America

2540 Empire Drive
Winston-Salem, NC 27103-6710

WITHDREW - November 9, 1995

If a laboratory withdraws from the certification program, aviation employers *must select another* DHHS-certified laboratory. A laboratory that is under suspension may still receive specimen shipments, but cannot open or access such specimens, and must send them to a currently certified laboratory for testing.

To verify the certification status of a laboratory, DHHS has established a telephone HELPLINE -- (800) 843-4971.

LETTERS TO THE UPDATE...

CONSORTIA SERVICES & MEMBER PAYMENTS

Submitted by: Vickie L. Henderson-Zegar, DRZ Management Associates, Inc.

The June 1995 issue of the Aviation Dug/Alcohol Abatement UPDATE included an article entitled, "Consortia May Not Withhold Information From Employers." As an administrator of a national consortium, the title intrigued me. However, the perspective seemed to lack a complete understanding of the financial ramifications of member companies that fail to compensate the consortium for service provided.

As everyone in the aviation industry knows, FAA covered companies must have approved plans in order to remain active, compliant businesses. All businesses experience fluctuating financial successes. However, what happens when a consortium member experiences a financial setback? Every company tries to stay afloat, pay for services and stay out of the *red*. Some companies may even stop paying for services that are vital to the continuation of their business, such as consortium services. What happens to the affiliated services provided by the consortium (i.e., MRO, lab, collection facility, etc.) if this happens? Our experience has been that many smaller aviation companies do not see a connection between FAA, the consortium and their regulatory compliance. Since FAA rarely fines a company for non-compliance, why pay the consortium? We do not believe that FAA should indemnify consortias, we do believe, however, that strict enforcement of the regulations would help us collect monies due for services provided.

According to the UPDATE, "consortia are obligated to release program records when they have been requested from the employer by the FAA." However, just like FAA covered companies make wise business decisions, it is my belief that the consortium faced with extensive non-payment, needs to notify the non-paying member company payment must be current or services will be discontinued. If payments are late for an unreasonable period, the consortium should follow the recommendation of the FAA and pack up their records, return them to the non-complying company and discontinue service. No business should have to provide service free of charge. A struggling company would profit by having honest up-front discussions with the businesses they interface with to arrange for an agreed upon payment plan. Hence the old adage "you don't get something for nothing."

BRIEFLY...

RELEASE OF TEST RESULTS IS REQUIRED

Employers must promptly release employee antidrug and alcohol misuse prevention program records upon receipt of the written consent of an employee. The request for the release of information must be for release to an identified person and there must be a separate release each time information is to be disclosed. Employers who fail to timely comply with requests for release of records are frustrating the intent of the FAA's regulations and the FAA should be notified of these employers.

REGIONAL DRUG ABATEMENT PROGRAM OFFICE LIST

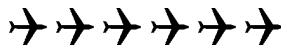
An updated list reflecting new addresses and telephone numbers of the Regional Drug Abatement Program Offices is attached to this newsletter.

PROCESSING REQUESTS FOR SPLIT SPECIMEN ANALYSIS

All requests for split specimen analysis must be processed by medical review officers without regard to financial considerations, even if the employer has a policy that requires employees to pay for the analysis. It may be necessary for employers to recover the costs of such testing after the analysis has been completed, but they can not predicate the availability of split specimen analysis on the employee's ability to pay.

TESTING OUTSIDE THE U..S. NOT AUTHORIZED

No covered employee shall undergo a drug/alcohol misuse test under the FAA's regulations while located outside the territory of the United States. Further, each employee assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon inception of such an assignment and returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.



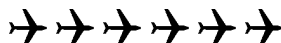
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FAA/Drug Abatement Division (AAM-800)

400 7th Street, SW

Washington, DC 20590

Comments or suggestions should be sent to the above address.



Regional Drug Abatement Offices

Alaska Region, AAL-305
(Alaska)
FAA/Drug Abatement
222 West 7th Avenue, Box 14
Anchorage, AK 99513-7587
(907) 271-4514

Great Lakes Region, AGL-306
*(Ohio, Indiana, Michigan, Wisconsin,
North Dakota, South Dakota, Illinois)*
FAA/Drug Abatement
2300 East Devon Avenue, Room 418
Des Plaines, IL 60018
(708) 294-8516

Central Region, ACE-303
(Nebraska, Missouri, Kansas, Iowa)
FAA/Drug Abatement
601 East 12th Street
Room 1534 C
Kansas City, MO 64106
(816) 426-5096

New England Region, ANE-302
*(Maine, Vermont, Massachusetts, Connecticut
New Hampshire, Rhode Island)*
FAA/Drug Abatement
12 New England Executive Park
Burlington, MA 01803
(617) 238-7305

Eastern Region, AEA-301
*(New York, West Virginia, Maryland, New Jersey,
Pennsylvania, District of Columbia,
Delaware, Virginia)*
FAA/Drug Abatement
Fitzgerald Federal Building 111
JFK International Airport
Jamaica, NY 11430
(718) 553-3301

Northwest Mountain Region, ANM-306
*(Oregon, Montana, Wyoming, Utah,
Colorado, Idaho, Washington)*
FAA/Drug Abatement
1601 Linda Avenue SW
Renton, WA 98055-4056

Southern Region, ASO-305
*(Kentucky, Tennessee, Alabama, South
Carolina, North Carolina, Georgia, Florida
Mississippi, Puerto Rico, Virgin Islands,*
FAA/Drug Abatement
1701 Columbia Avenue
College Park, GA 30337
(404) 305-6176

Western Pacific Region, AWP-310
*(Arizona, California, Nevada, Hawaii,
Mariana Islands, American Samoa)*
FAA/Drug Abatement
15000 Aviation Boulevard
Lawndale, CA 90261
(310) 725-3771

Southwest Region, ASW-305
*(New Mexico, Oklahoma, Arkansas,
Louisiana, Texas)*
FAA/Drug Abatement
2601 Meacham Boulevard
Fort Worth, TX 76106
(817) 222-5305